

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS,
SAN ANTONIO DIVISION**

TYLER KIRSCHBAUM
Plaintiff,

v.

**E. MARTINEZ TRANSPORT, LLC AND
JUAN-MANUEL C. HERNANDEZ**
Defendants.

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CIVIL ACTION NO. 16-CV-219

NOTICE OF REMOVAL

TO: THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS, SAN ANTONIO DIVISION:

COMES NOW, **Defendant, JUAN-MANUEL C. HERNANDEZ**, in the above entitled and numbered cause, and presents this, his Notice of Removal of the suit brought by Tyler Kirschbaum from the District Court of Bexar County, Texas, 288th Judicial District, where the suit was instituted, to this United States District Court for the Western District of Texas, San Antonio Division. Expressly reserving all questions other than that of removal, Defendant respectfully shows that removal is proper as follows:

I.
INTRODUCTION

- 1.1. Plaintiff is Tyler Kirschbaum, a resident of Texas ("Plaintiff").
- 1.2. Defendant Juan-Manuel C. Hernandez is a Mexican National residing in Nuevo Leon, Mexico ("Defendant").
- 1.3. Defendant E. Martinez Transport, LLC, is a Limited Liability Company ("Defendant EMT"). The sole member of Defendant EMT, Ezequiel Martinez, is a Mexican

National residing in Nuevo Leon, Mexico. Therefore, Defendant EMT is a citizen of Mexico.¹ Defendant EMT does not oppose, and expressly consents to this Notice of Removal. The attorney-in-charge for Defendant E. Martinez Transport, LLC is also the attorney-in-charge for Defendant Juan-Manuel C. Hernandez, and he is signing on behalf of both defendants.

II.

FACTUAL AND PROCEDURAL BACKGROUND

2.1. This suit arises out of an automobile collision that occurred in San Antonio, Texas.

2.2. Plaintiff filed his suit on November 2, 2015 in in the District Court of Bexar County, Texas, 288th Judicial District and it was assigned Cause No. 2015CI18453. Plaintiff claims Defendant was negligent in the operation of his vehicle. Plaintiff further claims that Defendant EMT was directly liable for negligent hiring, amongst other allegations of direct negligence, and vicariously liable based on the doctrine of respondeat superior.

2.3. Defendant was served on February 2, 2016.² Defendant files this notice of removal within the 30-day time period required by 28 U.S.C. § 1446(b). *Mumfrey v. CVS Pharm.*, 719 F.3d 392, 397-98 (5th Cir. 2013); *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 692 (9th Cir. 2005).

III.

BASIS FOR REMOVAL

3.1. Removal is proper because there is complete diversity between the parties. 28 U.S.C. § 1332(a). Plaintiff is an individual U.S. Citizen and a resident of the State of Texas.

¹ *Harvey v. Grey Wolf Drilling, Co.*, 542 F.3d 1077, 1080 (5th Cir. 2008) (holding that “the citizenship of a LLC is determined by the citizenship of all of its members.”).

² On February 2, 2016, Judge David A. Canales granted Plaintiff’s Motion for Substitute Service upon Defendant Juan-Manuel C. Hernandez, wherein Plaintiff requested that he be allowed to serve Defendant Juan-Manuel C. Hernandez by serving his employer at the time of the incident in question, Defendant EMT. Accordingly, on February 2, 2016, Plaintiff delivered the service papers to Defendant EMT, which purportedly effected service upon Defendant Juan-Manuel C. Hernandez.

Defendant is an individual noncitizen, Mexican National, and a resident of Mexico. Defendant EMT is a citizen of Mexico because its sole member is an individual noncitizen, Mexican National, and a resident of Mexico.

3.2. Additionally, the amount in controversy exceeds \$75,000.00, excluding interest and costs. 28 U.S.C. 1332(a); *Andrews v. E.I. du Pont de Nemours & Co.*, 447 F.3d 510, 514-15 (7th Cir. 2006). Specifically, in his Original Petition, contained within the certified copy of the Bexar County District Clerk's file for the state court action attached hereto, Plaintiff is seeking damages for past and future pain and suffering, past and future mental anguish, past and future medical expenses, past and future physical impairment and disfigurement, past lost wages, loss of future wage earning capacity, property damage, loss of use, and exemplary damages. Moreover, to the extent that this Court still requires additional evidence on the amount in controversy, Defendant respectfully asks this Court for a limited jurisdictional discovery, and, if necessary, to postpone ruling on remand until discovery is completed if the Court feels more evidence on the amount in controversy is needed.³

3.3. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district.

3.4. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.

3.5. Pursuant to 28 U.S.C. § 1446(b), Defendant provides a copy of all process, pleadings, and orders served upon Defendant, which are included a certified copy of the Bexar County District Clerk's file for the state court action. These documents are attached as "EXHIBIT 1." Furthermore, an Index of Attorneys/Parties is attached as "EXHIBIT 2."

³ Defendant EMT propounded discovery requests to Plaintiff on December 4, 2015. Pursuant to a Rule 11 Agreement extending Plaintiff's deadline to respond, Plaintiff responded on January 25, 2016. However, Plaintiff virtually responded with only objections and no substantive information.

III.
PRAYER

3.1 In accordance with the above, Defendants pray that this Court enter such further Orders and grant such further relief as may be necessary to secure removal herein and to prevent further proceedings in the 288th Judicial District Court of Bexar County, Texas, and for such other and further relief, general and special, legal and equitable, to which it may show itself to be justly entitled.

Respectfully submitted,

By: /s/ James H. Hunter, Jr.
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the above and foregoing document was filed electronically and forwarded *via the CM/ECF Filing System, facsimile, Regular U.S. Mail, certified mail, return receipt requested and/or E-Mail* to all known counsel of record on this **1st** day of March 2016, as follows:

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